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ABBOTT LABORATORIES

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION  
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16 SMITHKLINE BEECHAM CORPORATION  
17 d/b/a GLAXOSMITHKLINE,

18 Plaintiff,

19 vs.

20 ABBOTT LABORATORIES,

21 Defendant.  
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Case No. C07-5702 (CW)

**ABBOTT'S OPPOSITION TO MOTION  
TO MODIFY TRIAL SCHEDULE**

1 Abbott opposes GSK's motion to change the trial schedule, which the Court set over three  
2 months ago and which Abbott has relied on when arranging the schedules for multiple expert and  
3 fact witnesses, including third parties witnesses. Under the Court's order, the three-week trial is  
4 set to begin May 4 and end May 22, 2015. (11/13/14 Tr. 36-37.) GSK proposes that trial now  
5 begin a week later on May 11 with no trial on May 15—leaving only 9 days of trial. This request  
6 is impractical and should be rejected. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087  
7 (9th Cir. 2002) (“[T]he pretrial scheduling order can only be modified ‘upon a showing of good  
8 cause.’”) (citing, among other authority, Fed. R. Civ. P. 16); *Johnson v. Mammoth Recreations,*  
9 *Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (“[O]rders ‘following a final pretrial conference shall be  
10 modified only to prevent manifest injustice.’”) (quoting Fed. R. Civ. P. 16).

11 If the case proceeds to trial without the currently-pending antitrust claim, as GSK has  
12 requested, the trial will certainly be shorter. But Abbott believes it will still require 10-11 trial  
13 days. And GSK itself “expects that the trial will last . . . two weeks, or slightly less” (although it  
14 has not identified what witnesses, if any, it intends to drop). If it does take two weeks, GSK's 9-  
15 day proposal could mean the trial will not conclude on May 22. We see no reason to cut it so  
16 close.

17 If the Court maintains the May 4 trial date, the trial would conclude on or about May 18 or  
18 19 (Abbott does not object to GSK's request to adjourn on May 15). In addition to ensuring the  
19 parties have sufficient time to try this case, this schedule could allow jury deliberations to  
20 conclude before the Memorial Day weekend, which begins May 22.

21 While GSK notes that two of its witnesses have scheduling conflicts, the answer is simply  
22 that they testify out-of-order. GSK has known about the trial date for three months and has  
23 provided no explanation for waiting until now to raise these scheduling conflicts. *Zivkovic*, 302  
24 F.3d at 1087-88 (“*Zivkovic's* counsel did not seek to modify that order until four months after the  
25 court issued the order. *Zivkovic* [thus] did not demonstrate diligence in complying with the dates  
26 set by the district court, and has not demonstrated ‘good cause’ for modifying the scheduling  
27 order, as required by Fed. R. Civ. P. 16(b).”).

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1 For these reasons, Abbott respectfully requests that the Court deny GSK's motion to  
2 modify the trial schedule.

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4 Dated: March 3, 2015

5 /s/ Charles B. Klein  
6 Charles B. Klein  
7 WINSTON & STRAWN LLP

8 Attorneys for Abbott Laboratories  
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